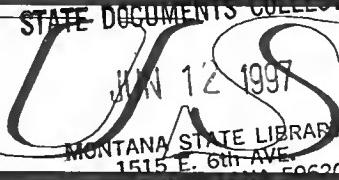


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FOCUS

WORKERS' COMPENSATION NEWS



Volume #3
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1997

The Only Constant is Change

CHANGES IN PUBLIC POLICY, MEDICAL BENEFITS AND PERMANENT PARTIAL DISABILITY BENEFITS SINCE 1987

by Charlotte Payne and Jeanne Johns

The Montana State Legislature has made numerous revisions and reforms to the state's Workers' Compensation Act since 1987. This article will explore some of the more significant changes in the areas of public policy on workers' compensation, medical benefit entitlement and permanent partial disability benefits.

The Workers' Compensation Act in effect prior to July 1, 1987 is referred to as the "Old Law". This law was significantly modified in 1987, 1991 and 1995. Less comprehensive changes were made during the 1989 and 1993 legislative sessions.



PUBLIC POLICY

The 'Old Law' did not have a section defining the public policy on workers' compensation in Montana. However, this law contained a "Liberal Construction" doctrine which instructed the courts to rule in favor of the worker if all other factors were equal. A 1955 court case clarified that the intention of the liberal construction requirement was for the benefit and protection of injured workers and workers' beneficiaries.

In 1987, the Legislature repealed the Liberal Construction doctrine and added into the law a Declaration of Public Policy which defined the purpose of the workers' compensation system. This section of the Act declared that the objective of the Montana workers' compensation system was to provide wage supplement and medical benefits to an injured worker regardless of who was to blame for the injury. The policy states that wage loss benefits are not intended to compensate an injured worker for everything they may have lost but rather, to assist the worker at a reasonable cost to the employer. Further, the system's objective is to return a worker to work as soon as possible after a work related injury or disease. And, the system is designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

In accordance with this policy statement, the Legislature enacted a mandatory, non-binding mediation process to attempt to resolve workers' benefit disputes prior to proceeding to court.

As the Legislature changed its outlook on the purpose of workers' compensation, benefit entitlement also changed. The 'Old Law' required a worker to miss 6 working days as a result of the injury before wage loss benefit entitlement began on the seventh day. Under all versions of the Act, medical benefits are covered from the date of injury.

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MEDICAL BENEFITS

The type and duration of medical benefits covered by the Workers' Compensation Act has also evolved over the years. The "Old Law" required the insurer to provide reasonable medical services to the injured worker "without limitation as to length of time or dollar amount".

In 1991, important changes affecting medical benefit coverages were enacted. Prior to 1991, the length of time an insurer could be responsible for medical expenses related to the injury was not limited. The 1991 legislature amended the statutes to allow the insurer to close medical benefits if a worker does not seek treatment for a period of 60 consecutive months. Additionally, in most cases, the insurer was now only required to reimburse a medical provider for the cost of generic drugs - the worker being responsible for paying the difference if they chose to purchase a brand name.

The 1993 Act further defined the medical services available to an injured worker. This statute differentiated between primary medical services and secondary medical services. Primary medical services are those treatments prescribed by the treating physician needed for the injured worker to reach a point in the healing process where further improvement is unlikely (maximum medical improvement (MMI)). Insurers are responsible for paying for primary medical services. Secondary medical services are covered only if it is clearly demonstrated the treatment would be cost effective in returning a worker to work. Secondary medical services are those that are not medically necessary for reaching medical stability.

According to the 1993 statutes, once a worker achieves medical stability, the insurer is not responsible for any further medical care. There are some exceptions to this rule.

In 1993, Managed Care Organizations (MCOs) were allowed to contract with insurers for treatment of their injured workers. In the past, the worker could choose a treating

physician. Now, after choosing an initial treating physician, the insurer can direct the injured worker to a MCO for further care. This change in care can take place if the claim will result in: 1) wage loss of any duration, 2) a permanent impairment, 3) a need for specialized testing, 4) the need for referral to a specialist, or 5) if the injured worker requests a change in treating physicians.

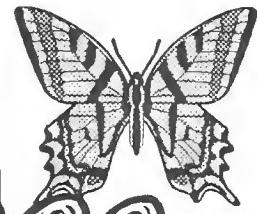
The insurer may also refer a worker to a preferred provider after the worker has chosen an initial treating physician. Once the worker is notified of this referral, the insurer is not responsible for medical expenses from the non-preferred provider.

Other changes made to this Statute in 1993 allow the insurer to require the worker to pay a co-payment for visits to a medical provider after the initial visit. The co-payment is 20% of the bill, but not over \$10.00 per visit. Co-payments for visits to a medical provider are not required for treatment from a preferred provider or MCO. The worker must pay a co-payment of \$25.00 for each subsequent visit to a hospital emergency room.

PERMANENT PARTIAL DISABILITY

Wage loss benefit entitlement has also changed dramatically in the past 10 years, particularly for Permanent Partial Disability (PPD) benefits. Temporary Total Disability (TTD) benefits are paid when a worker is first injured and has a total wage loss. These benefits are usually paid during the healing period until the worker can return to some type of work. Once the healing period has ended and maximum medical improvement (MMI) is reached, the worker may still have some permanent disability or remaining symptoms as a result of the injury.

Permanent Partial Disability benefits are meant to help compensate the worker for these permanent losses. One type of PPD



benefit is the impairment award which reflects an assessment of the permanent loss of function and physical damage to the body after an injury has healed. These ratings are provided by a physician in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. The rating is converted into a dollar award which is given to the worker.

Different versions of the Workers' Compensation Act have also provided for PPD benefits for actual loss of earnings, loss of earnings capacity (what a worker could have potentially earned if not for the injury) and, more recently, factors such as age, education and physical restrictions.

Since PPD benefits are the basis for the majority of workers' compensation settlements, they provide the best example of the benefit reforms enacted since 1987. Note that the date of injury determines which version of the Workers' Compensation Act is used to adjust the claim.

Under the "Old Law" an injured worker could receive PPD benefits for up to 500 weeks. For this statute, the maximum PPD settlement under this law was \$74,750.

In 1987, the law was changed to allow PPD benefits based on the impairment and a worker's *actual* loss of earnings (not earning capacity). Lump sum settlements could be discounted to present value (this is the settlement amount minus the interest which would accrue using a biweekly payment plan). For injuries occurring during fiscal year 1988, the maximum settlement value was \$75,500. This increase over the pre-July 1, 1987 figure is due to the yearly increase in the maximum PPD rate. If

Highlights of Major Changes

1987- Not covered in article

- ☒ Definition of injury is changed to exclude emotional or mental stress
- ☒ Spouse's death benefits limited to 500 weeks; remarriage dowry is eliminated
- ☒ A worker is required to notify the employer or insurer of injury within 30 days instead of 60 days.
- ☒ Changes in the definition of injury effectively place micro trauma and overuse syndromes under the Occupational Diseases Act.

1987 - Covered in article

- ☒ Liberal Construction Doctrine repealed
- ☒ Declaration of public policy added
- ☒ Mandatory non-binding mediation process enacted
- ☒ Lost work days required for benefit entitlement changed from 5 to 6
- ☒ PPD benefits based on the impairment and actual wage loss

1991

- ☒ Decreased amount of weeks worker could receive PPD benefits from 500 to 350
- ☒ Worker could receive 2 years of retraining benefits
- ☒ Limited length of time insurer responsible for medical payments
- ☒ Insurer only required to reimburse medical provider for cost of generic drugs

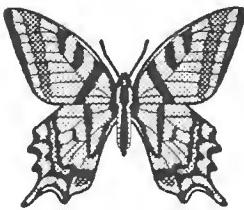
1993

- ☒ Insurers only responsible for paying for primary medical services unless clearly demonstrated secondary medical service would be cost effective in returning the injured worker to work
- ☒ MCOs allowed to contract with insurers
- ☒ Insurers allowed to require worker to pay co-payment for visits after initial visit.

1995

- ☒ Present value discount reinstated
- ☒ Injury must result in actual wage loss to receive PPD benefits

the worker chose to take the settlement in a lump sum, instead of biweekly over 500 weeks, the present value discount was applied. When the present value discount is applied to this lump sum, the settlement value is decreased to approximately \$52,000 to \$55,000 depending on the discount factor



(interest rate) in effect at the time of the lump sum payment.

In 1991, the Legislature again significantly revised PPD. The maximum number of weeks a worker could receive PPD benefits was decreased from 500 to 350 weeks. In exchange for this decrease in PPD benefits, disabled workers could receive up to two years of retraining benefits and the present value discount on lump sum payments was eliminated. This law added disability percentages for the worker's age, education, post-injury physical restrictions and post-injury wage loss. These additional factors could increase the impairment percentage by up to 46%. Assuming a worker has a 15% impairment and is entitled to the full 46% for the other factors, the settlement value of his case would be approximately \$36,000.

Further, the law now required two conditions be met before a worker became eligible for PPD benefits: 1) a medically determined physical restriction as a result of the injury; and, (2) the physical restriction must impair the workers' ability to work.

In 1995, the Legislature again revised the PPD entitlement by decreasing the percentage points available for post-injury physical restrictions, age and education and reinstating the present value discount. This changed the maximum percentage points that could be added to the impairment to 27%. Under this law, the worker described above now has a settlement value of approximately \$27,500. Now, to receive PPD benefits beyond the impairment award a worker must have a permanent impairment established by objective medical findings which impairs the workers' ability to work **and** the injury must result in an actual wage loss.

This is a brief summary of three areas of change in the Workers' Compensation Act

over the past 10 years. Undoubtedly, this year's legislative session will lead to yet more changes.

More Changes

CHANGES AT THE STATE COMPENSATION INSURANCE FUND

Jeannie Huntley

Along with the many changes affecting the regulation side of workers' compensation, changes also affected the insurance side. The following are changes that directly impacted the State Compensation Insurance Fund.

1987

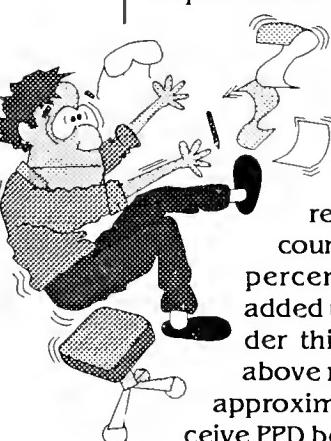
Extensive benefit reform took place in the 1987 Legislative session. A payroll tax was placed on employers to address the unfunded liability in the State Fund.

1989

The organizational structure of the State Fund was changed by the Legislature so it could function like a business. The State Fund separated from the Division of Workers' Compensation. The State Fund was to be governed by a Board of Directors appointed by the Governor, and the State Fund hires a CEO with insurance expertise to handle operations.

1990

The 1990 Legislative Special session separated the liabilities of the State Fund effective July 1, 1990. They were separated based on whether accidents occurred before July 1, 1990 (Old Fund) or after July 1, 1990 (New Fund). The State Fund will administer the claims of the Old Fund, which are funded by a payroll tax on employers.





1991

Benefit reform took place and reshaped benefits payable to injured workers.

1993

The Legislature addressed "cost containment" by passing bills addressing the provision of medical services, fraud and safety. The payroll tax on employers was increased, and a tax was placed on employees and the self-employed.

1995

Additional legislation was passed further reforming benefits. It was estimated by the National Council on Compensation Insurance (NCCI) as having a -12% overall rate impact.

1997

Senate Bill 67 enacts several changes, the most significant being:

- ☒ Eliminating the old fund liability tax by 6/99 (estimated).
- ☒ Giving State Fund the authority to pay dividends to deserving policy holders.
- ☒ Giving the Department of Labor & Industry's Uninsured Employers' Fund access to investigators and prosecutors in the workers' compensation fraud office at the Department of Justice.
- ☒ Allowing State Fund customers to come directly to State Fund or to use a licensed insurance agent.
- ☒ Enhancing access to vocational rehabilitation benefits for certain workers.

The next issue of FOCUS will contain more complete information on legislative changes that affect workers' compensation.

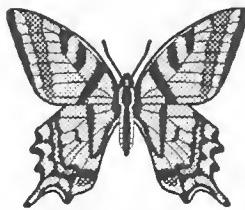
CIGNA is First to Report Via EDI



The Employment Relations Division (ERD) is pleased to announce that CIGNA is the first workers' compensation adjuster to send the First Report of Injury via electronic data interchange (EDI). In 1993, the Montana Legislature mandated the construction of a new workers' compensation database. This law allows for electronic reporting of data. ERD joined 48 other states in adopting the International Association of Industrial Accidents Boards and Commissions reporting standards for EDI.

To be accepted as an EDI trading partner in Montana, the adjuster must be able to show they can submit reports with at least 90% accuracy. CIGNA submitted their test data with 100% accuracy, making them the first EDI trading partner to be granted production status with ERD. CIGNA now submits all of their First Reports of Injury electronically.

Montana workers' compensation adjusting firms interested in EDI may contact: Lori Williams, 406-444-0080, 406-444-4140 (FAX), or LWilliams@mt.gov for E-mail.



Don't Fight It!

Learn About It - at the 1997 Assistance for Business Clinics



Assistance for Business Clinics give you information on employment, safety and tax laws. We tell you how and when to file state and federal forms. The following agencies will provide information:

- Department of Labor and Industry
 - * Employment Relations Division
 - Wage and Hour
 - Safety Bureau
 - Workers' Compensation
 - Contractors' Registration
 - * Unemployment Insurance Division

- Internal Revenue Service

- Montana Department of Revenue

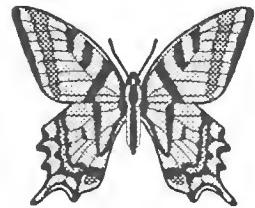
Clinic schedule:

Registration	7:30 to 7:50
Opening Remarks	7:50 to 7:55
Agency Presentations:	8:00 to 12:00
	12:45 to 4:30

Registration fees are set by the local sponsor to cover facility costs, including lunch. **For more information or to register, please contact your local sponsor.** Send your registration form and check to your local sponsor one or two weeks prior to the clinic. Enrollment may be limited. Please respond as soon as possible. *The clinic will be held twice in Missoula and twice in Billings. The same program will be offered each day.*

1997 SCHEDULE

City	Date	Location	Sponsor	Fee
Livingston	4/17	Yellowstone Motor Inn	Job Service	(222-0520) \$25
Havre	4/22	MSU - Northern	Chamber of Commerce	(265-4383) \$20
Great Falls	4/23	MSU College of Technology	Chamber of Commerce	(761-4434) \$27
Dillon	4/30	Western MT College of the U of M	Chamber of Commerce	(683-5511) \$20
Libby	5/6	Venture Motor Inn	Chamber of Commerce	(293-4167) \$15
Kalispell	5/7	Outlaw Inn	Chamber of Commerce	(758-2800) \$25 member \$30 non
Missoula	5/20 or 21	Ruby Reserve Street Inn	Chamber of Commerce	(543-6623) \$30
Glasgow	6/10	Cottonwood Inn	Chamber of Commerce	(228-2222) \$15 member \$20 non
Glendive	6/11	Best Western Jordan Inn	Chamber of Commerce	(365-5601) \$20
Miles City	6/12	Miles City Community College	Chamber of Commerce	(232-2890) \$20
Billings	8/19 or 20	MSU - Billings	MSU - Billings	(657-2203) \$25
Lewistown	9/3	Yogo Park Inn	Chamber of Commerce	(538-5436) \$20
Bozeman	9/4	MSU - Strand Union Bldg	Chamber of Commerce	(586-5421) \$20 member \$25 non
Butte	9/11	War Bonnet Inn	Chamber of Commerce	(494-5595) \$20
Helena	9/17	Colonial Inn	Chamber of Commerce	(447-1941) \$30



SAFETY FOCUS GROUP FORMS IN HELENA

John Maloney

Over the past two years local safety focus groups have been meeting in various cities throughout Montana. The initial group was formed in Missoula. Aptly named the Missoula Area Safety and Health (MASH) group, it was copied in Billings (BASH), Great Falls (GASH) and in Southwest Montana (SWASH)!! In February a similar group held its initial meeting in Helena (should I say HASH?).

These groups are a result of the Safety Bureau staff taking a new approach to teaching/sharing/learning the various safety and health regulations and issues that affect everyone. Although most of the attendees at the monthly meetings are involved in the safety field in some way, whether they be safety professionals, insurance representatives or just members of their employer's safety committee, the topics discussed generally relate to everyone in one way or another. Each meeting varies in content, but normally a guest speaker makes a presentation which is followed by group discussion. The groups have been an excellent source of networking and resource material in each community.

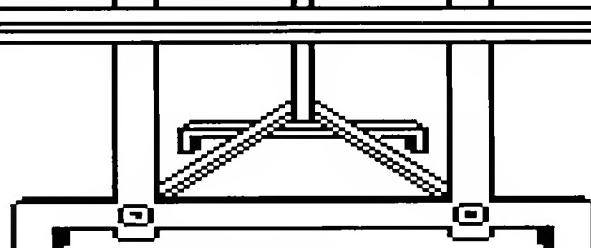
The organizational meeting of the Helena group was held February 27. The first meeting provided background information on the existing focus groups, including some "in person" experiences by organizers in other Montana cities, and discussed topics for future meetings in Helena. The group meets monthly at St. Peter's Hospital in Helena and is open to anyone who is interested in occupational safety and health issues. There are no membership fees or responsibilities assigned to be an active member of the group. Everything is accomplished on volunteer basis.

These groups have proven to be an excellent resource for anyone who works in the

safety and health field, whether they are full-time, part-time, experienced or novice.

Anyone with questions can contact Kris Hunt in the Safety Bureau at 444-3937.

1997 Governor's Conference on Workers' Compensation and Occupational Safety



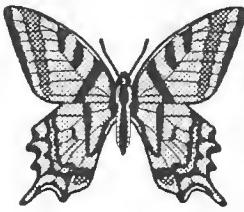
**JOIN US AT
BIG SKY, MONTANA
SEPTEMBER 8 - 10, 1997**

The 1997 Annual Governor's Conference on Workers' Compensation and Occupational Safety will be held at Big Sky, Montana, September 8-10, 1997. Call Kara Christianson, 406-444-4637 for registration information.

If you would like to provide or need information regarding an Exhibitor's booth at the conference, please contact Buffy Miller at 406-444-0563.

If you are interested in sponsoring a function at the conference, please contact Lacey Culver at 406-444-1375.

If you have additional questions, comments, suggestions or concerns, call Kara at the number listed above. See you there.



LEGISLATION

In the next edition of FOCUS we'll give you a complete update of all the workers' compensation legislative changes that may be of interest to you.

New Telephone Numbers



We've had some changes in phone numbers since the last edition of FOCUS.

To reach field staff in the Uninsured Employers' Fund, please call the following numbers:

Billings	- 247-1036 or - 247-1037
Great Falls	- 761-5844
Missoula	- 542-5785 or - 542-5786

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